

Message Text

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C O N F I D E N T I A L STATE 147389

E.O. 11652:GDS

TAGS:NATO, PARM

SUBJECT: NATO EXPERTS MEETING ON HUMANITARIAN LAW IN ARMED
CONFLICT

1. PARA 2 BELOW CONTAINS US CONTRIBUTION TO EXPERTS DIS-
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CUSSION ON PROTOCOLS BEGINNING JUNE 28. PLEASE SUBMIT IT
TO APPROPRIATE NATO OFFICIAL.

2. BEGIN TEXT:

1. THE UNITED STATES IS PLEASED TO PROVIDE ITS PRE-
LIMINARY VIEWS CONCERNING VARIOUS FORMAL STATEMENTS WHICH
MAY BE APPROPRIATE UPON RATIFICATION OF THE TWO PROTOCOLS
TO THE 1949 GENEVA CONVENTIONS.

2. AT THE PRESENT TIME, THE UNITED STATES IS CONSIDERING MAKING THE FOLLOWING FORMAL STATEMENTS AT THE TIME OF ITS RATIFICATION OF THE PROTOCOLS:

A. PROTOCOL I

(1) IT IS THE UNDERSTANDING OF THE UNITED STATES OF AMERICA THAT THE RULES ESTABLISHED BY THIS PROTOCOL WERE NOT INTENDED TO HAVE ANY EFFECT ON AND DO NOT REGULATE OR PROHIBIT THE USE OF NUCLEAR WEAPONS.

(2) IT IS THE UNDERSTANDING OF THE UNITED STATES OF AMERICA THAT THE PHRASE "MILITARY DEPLOYMENT PRECEDING THE LAUNCHING OF AN ATTACK" IN ARTICLE 44, PARAGRAPH 3, MEANS ANY MOVEMENT TOWARDS A PLACE FROM WHICH AN ATTACK IS TO BE LAUNCHED, AND THAT THE SITUATIONS DESCRIBED IN THE SECOND SENTENCE OF PARAGRAPH 3 OF ARTICLE 44 ARE VERY EXCEPTIONAL AND CAN EXIST ONLY IN OCCUPIED TERRITORY OR IN ARMED CONFLICTS DESCRIBED IN ARTICLE I, PARAGRAPH 4.

(3) IT IS THE UNDERSTANDING OF THE UNITED STATES OF AMERICA THAT THE REFERENCES IN ARTICLES 51 AND 57 TO MILITARY ADVANTAGE ANTICIPATED FROM AN ATTACK ARE INTENDED TO

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REFER TO THE ADVANTAGE ANTICIPATED FROM THE ATTACK CONSIDERED AS A WHOLE, NOT FROM ISOLATED OR PARTICULAR PARTS OF THAT ATTACK.

(4) IT IS THE UNDERSTANDING OF THE UNITED STATES OF AMERICA THAT ARTICLE 53 ESTABLISHES A SPECIAL PROTECTION FOR A LIMITED CLASS OF OBJECTS WHICH, BECAUSE OF THEIR RECOGNIZED IMPORTANCE, CONSTITUTE A PART OF THE CULTURAL AND SPIRITUAL HERITAGE OF PEOPLES, AND THAT SUCH OBJECTS WILL LOSE THE SPECIAL PROTECTION OF THAT ARTICLE IF THEY ARE USED IN SUPPORT OF THE MILITARY EFFORT.

B. PROTOCOL II

IT IS THE UNDERSTANDING OF THE UNITED STATES OF AMERICA THAT THE TERMS USED IN PART III OF THIS PROTOCOL WHICH ARE THE SAME AS THE TERMS DEFINED IN ARTICLE 8 OF PROTOCOL I SHALL SO FAR AS RELEVANT BE CONSTRUED IN THE SAME SENSE AS THOSE DEFINITIONS.

3. IN ADDITION TO THESE UNDERSTANDINGS ON PROTOCOLS I AND II, THE UNITED STATES BELIEVES THAT IT SHOULD BE MADE CLEAR THAT: IN RELATION TO ARTICLE 52 OF PROTOCOL I, A SPECIFIC AREA OF LAND MAY BE A MILITARY OBJECTIVE IF,

BECAUSE OF ITS LOCATION OR OTHER REASONS SPECIFIED IN THE ARTICLE, ITS TOTAL OR PARTIAL DESTRUCTION, CAPTURE OR NEUTRALIZATION IN THE CIRCUMSTANCES RULING AT THE TIME OFFERS DEFINITE MILITARY ADVANTAGE; AND THAT THE FIRST SENTENCE OF ARTICLE 52, PARAGRAPH 2, PROHIBITS ONLY SUCH ATTACKS AS MAY BE DIRECTED AGAINST NONMILITARY OBJECTIVES, AND DOES NOT DEAL WITH THE QUESTION OF COLLATERAL DAMAGE CAUSED BY ATTACKS DIRECTED AGAINST MILITARY OBJECTIVES. IT SHOULD ALSO BE MADE CLEAR THAT THE PROVISIONS OF PARA IV, SECTION I OF PROTOCOL I MUST BE APPLIED TO THE ACTIONS OF COMMANDERS, AND OTHERS RESPONSIBLE FOR PLANNING, DECIDING UPON OR EXECUTING ATTACKS, ON THE BASIS OF INFORMATION REASONABLY AVAILABLE TO THEM AT THE TIME THEY TAKE SUCH ACTIONS AND NOT ON THE BASIS OF HINDSIGHT. HOWEVER, WE HAVE NOT DETERMINED WHAT FORM THESE CLARIFICATIONS SHOULD TAKE.

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4. THE UNITED STATES LOOKS FORWARD TO RECEIVING THE VIEWS OF ITS ALLIANCE PARTNERS ON THESE QUESTIONS. END TEXT. VANCE

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